IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1294 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINCHANDRA RAMANLAL SHAH

Versus

PANKAJ RAMANLAL SHAH

Appearance:

MR DEVANAND DEVNANI for Petitioner

RULE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/02/2001

ORAL JUDGEMENT

1. The present Revisioner is the plaintiff in Civil Suit No.508/1992 pending before City Civil Court (Court No. 14), Ahmedabad. The suit was preferred by the plaintiff against the defendants seeking a declaration

that he is the owner of Bungalow No.1 situated at Plot No.642 at Panchvati Co-operative Housing Society Limited and that the defendant has no right therein. Further relief was sought to the effect that the defendant be directed to hand over possession of a part of the premises occupied by the defendant, and a direction restraining the defendant from transferring or assigning the property in his possession to anybody else. An injunction was further sought, restraining the defendant from obstructing the peaceful enjoyment of the property in possession of the plaintiff.

1.1. On September 25, 2000 the plaintiff tendered application at Exh.26 under Order 6, Rule 7 of Civil Procedure Code seeking amendment of the plaint. The plaintiff sought to add a contention for mesne profits at the rate of Rs.5,000/- per month for the use of the premises by the defendant. After revocation of permissive user, the cause of action was sought to be added by stating that it arose when the plaintiff revoked the permissive user of the defendant. In the relief clause a prayer for mesne profits at the rate of Rs.5,000/- was sought by adding Para 18 (f) to the plaint. Para 18 (g) and 18 (h) sought a decree for an amount of Rs.39,493.50 for the electricity charges in respect of the electricity used by the defendant out of occupation of the disputed premises and a prayer was sought for placing a sub meter in respect of the premises under occupation of the defendant and till then the defendant was sought to be directed to pay half of the electricity bill.

1.2. The application was opposed to by the defendant and a reply vide Exh.29 was filed on October 18, 2000. It was contended interalia that if amendment is allowed it would have a retrospective effect which cannot be permitted. The revocation of permissive user was also denied.

2. The learned Trial Court Judge after considering the rival side cases partly allowed the amendment application Exh.26. He allowed the amendment as sought for except the amendments vide Clause 18 (g) and 18(h) which relate to the payment of Rs.39,493.50 being half of the electricity bill up to August 13, 2000 and grant of permission regarding installation of sub meter and direction that defendant should bear half of the electricity bill till the sub meter instalment.

3. Ms.K.R. Shah, learned Advocate appearing for the Revisioner submitted that the Court below has committed a

grave error in not allowing the amendment. If the amendment is allowed ultimately it is going to be decided on merits. It is not infact a grant of decree and the Court ought to have been liberal. She submitted that the Court below has not considered the fact that the reliefs that are sought and are rejected are only consequential reliefs arising out of the main cause of action and reliefs in the suit. She submitted that even the other side says that demand for 50% of electricity charges is unreasonable as the defendant occupies only a small portion of the premises in question. According to her defendant thereby admits the liability to pay. She submitted that defendant has now become a trespasser by virtue of revocation of permissive user and a trespasser cannot be permitted to enjoy the premises as well as enjoy the electricity facility without paying for it. These aspects are not considered by the Trial Court. She therefore submitted that this Revision Application may be allowed.

4. Rule is served by direct service and Ms.Shah states that affidavit in this regard has been filed. The opponent has not appeared either in person or through any Advocate.

5. Ms.Shah, has taken this Court through the amendment application, the order passed thereunder and the plaint.

6. It would be relevant to note that neither in the original plaint nor by virtue of amendments sought vide application Exh.26 the plaintiff has taken a contention regarding the defendant's liability and the plaintiffs right to recover 50% of the electricity charges. The relief sought in this regard is therefore without basis. As rightly observed by Trial Court, it is a new case advanced by the plaintiff which would change the nature of the suit. In such situation, it is also required to be noted that question regarding limitation would also come into play. Be that as it may, it is amply clear that no contention regarding entitlement of the plaintiff to 50 % of the electricity consumption charges is raised or sought to be raised. There is no amendment in the cause of action clause. Under the circumstances, it cannot be said that the Trial Court committed error in partly rejecting application Exh.26 rejecting amendment sought by adding para 18 (g) and 18 (h). No jurisdictional error is found or is indicated to have been committed by the Court below. This Court is therefore not inclined to exercise its revisional jurisdiction by entertaining this Revision Application.

The Revision Application is dismissed. Rule discharged.
No costs.

(A.L. DAVE, J.)

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